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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,010	04/11/2001	Richard A. Smith	20-464	9656

7590 12/20/2001

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EXAMINER

TRAN, PABLO N

ART UNIT	PAPER NUMBER
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2684

DATE MAILED: 12/20/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/832,010

Applicant(s)

SMITH ET AL.

Examiner

Pablo N Tran

Art Unit

2684

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 7-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-6, drawn to a message distribution center interposed between a source of a short message and a wireless network, classified in class 455, subclass 466.
 - II. Claims 7-16, drawn to a method and apparatus for throttling short messages to subscribers in a wireless network, classified in class 455, subclass 412.
2. The inventions are distinct, each from the other because of the following reasons:
Group I and Group II are drawn to independent, patently distinct inventions.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, have acquired a separate status in the art because their recognized divergent subject matter, and a different search is required for all groups.
4. During a telephone conversation with Mr. William H. Bollman on December 6, 2001 a provisional election was made WITHOUT traverse to prosecute the invention of Group I, claims 1-6. Claims 7-16 are withdrawn from further consideration by the Examiner, 37 C.F.R. 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Gossman et al.* (6,181,935) in view of *Couts et al.* (5,974,054).

As per claims 1 and 4, *Gossman et al.* disclosed a message distribution center interposed between a source of a short message and a wireless network including an intended recipient of said short message wherein the message distribution center (fig. 1, 6) comprises an SMTP protocol (col. 12/ln. 37-43, col. 8/ln. 36-41) communication channel to receive said short message from said source of said short message (fig. 1/no. 6, fig. 6/no. 6) and a communication channel to communicate said short message to said wireless network (col. 6/ln. 22-36, col. 10/ln. 4-14).

Gossman et al. does not disclosed such short message being placed in at least one of said plurality of subscriber queues before delivery to said wireless network. *Couts et al.* disclosed such FIFO message queue (fig. 2/no. 212). Therefore, it would have been obvious to one of ordinary skill in the art to modify and apply such FIFO message queue as discussed in *Couts et al.* to the SMS of *Gossman et al.*, in order to maintain a correct transmission order for numbered messages

As per claims 2-3, *Gossman et al.* disclosed such standard TCP/IP communication protocol but does not specifically disclose such RMI or SMPP protocols.

However, such is well known in the art that the examiner takes Official Notice of such. Therefore, it would have been obvious to one of ordinary skill in the art to modify and apply such RMI or SMPP protocols, well known, to the communication protocols of *Gossman et al.*, in order to provide any such standard protocol configurations for exchanging data to be implemented on the existing communication system to save cost.

As per claim 5, *Gossman et al.* in view of *Couts et al.* does not disclosed a predetermined maximum number of short message in each of said plurality of subscriber queues. However, such is well known in the art that the examiner takes Official Notice of such. Therefore, it would have been obvious to one of ordinary skill in the art to modify and apply a maximum number of messages in a queue for a subscriber, well known, to the communication system of *Gossman et al.* in view of *Couts et al.*, in order to provide queue capacity control.

As per claim 6, *Gossman et al.* disclosed said wireless is a wireless intelligent network (WIN) (fig. 1).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gossman et al. (6,317,594), Sawyer et al. (5,946,629), Winbladh (6,205,330), Laiho (5,978,685), Mikkola (6,327,479), Dezonno (6,289,373), and Bannister et al. (5,943,399) disclose method for providing short message to mobile device in a communication system.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pablo Tran whose telephone number is (703)308-7941. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Hunter, can be reached at (703)308-6732.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314 (for Technology Center 2600 only)


Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

December 12, 2001

Pablo Tran

Examiner, Art Unit 2684


DANIEL HUNTER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600